

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
WILLIAM M. EDWARDS

William M. Edwards ("Edwards") and the Missouri Real Estate Commission ("MREC") enter into this Settlement Agreement for the purpose of resolving the question of whether Edwards's license as a real estate broker, no. 2005028202, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2013. The MREC and Edwards jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2013.

Edwards acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing

¹ All statutory citations are to the 2000 Revised Statutes of Missouri as amended, unless otherwise noted.

against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Edwards may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Edwards knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Edwards acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Edwards stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Edwards's license as a broker, license no. 2005028202, is subject to

disciplinary action by the MREC in accordance with the relevant provisions of Chapters 621, RSMo, and 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Edwards in Part II herein is based only on the agreement set out in Part I herein. Edwards understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Edwards herein jointly stipulate to the following:

1. William M. Edwards is a real estate broker licensed by the MREC, license no. 2005028202. At all relevant times herein, Edwards' broker license was current and active.
2. In April, 2014, an audit was conducted of Edwards' business practices. The audit disclosed the following regarding Edward's real estate practices:
 - a) Edwards managed approximately 15 properties without obtaining a written agreement, issuing owner statements, and was unable to provide a property list or leases for the managed properties.

b) Edwards commingled rents, security deposits, and other from the managed properties under management in his broker account

#XXXX3130 at Empire Bank.

c) Edwards did not deposit and maintain rent in an escrow account.

d) Edwards did not retain a detailed receipt of released and/or transferred records given to property owners.

e) Edwards failed to maintain records necessary to determine the adequacy of management fees, such as:

- i. Failing to keep a register or any record of transactions for the deposit of rents, deducted management fees and disbursed owner checks, for funds deposited into his own personal account.
- ii. Failing to hold written management agreements that stated the amount of the management fee due or when dues were payable to him.
- iii. Failing to issue property owner statements or any kind of record which reflected the amount of management fee charged.
- iv. Failing to maintain any record of deposits to identify the amount of rents collected.

- f) Edwards conducted untrustworthy business dealings, such as:
- i. Failing to have written agreements for the management of approximately 15 properties;
 - ii. Failing to have written statements of the cost of his management fees;
 - iii. Failing to maintain a record of amounts charged to owners each month;
 - iv. Failing to maintain a register, a record of deposits, or a record of disbursements from his account;
 - v. Being unable to identify between transactions related to property management and/or personal expenses;
 - vi. Being unable to account between his funds and his property owners' funds in his bank account and drawing upon that account to pay for expenses incurred from his own rental properties; and,
 - vii. Failing to issue owner statements or keep any record of management fees and expenses charged to the property owners and failing to keep a record of expenses after invoices were sent to property owners.

3. Edwards acted as an agent of the seller of a property without a written agreement, including failing to retain an agreement in his records, as follows:

- a) In a transaction between G & E Private Capital LLLP and Joshua W. Posegate for the property located at 649 Greer, Nixa, MO, 65714, on or about March 18, 2014; and,
- b) In a transaction between G & E Private Capital LLLP and Emily Graaf for the property located at 201 Blue Jay, Clever, Missouri, on or about March 1, 2014.

4. Edwards' conduct violated Section 339.105.1, RSMo, concerning separate escrow accounts, which states:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

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3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary

documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

5. Regulation 20 CSR 2250-8.220(1), states concerning escrow accounts:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

6. Regulation 20 CSR 2250-8.120(4), states concerning commingling funds:

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow

account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

7. Regulation 20 CSR 2250-8.200(1) states concerning property management agreements:

(1) When managing property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

8. Section 339.780.2, RSMo, states concerning written agreements for property management:

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

9. Section 339.100.2, RSMo, states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to

renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

.....

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

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(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

10. Based on the conduct stipulated to herein, Edwards violated Section 339.780.2, RSMo, Section 339.105, RSMo, and the lawful rules 20 CSR 2250-8.120, 20 CSR 2250-8.220, and 20 CSR 2250-8.200(1), Edwards managed properties without an agreement, conduct that demonstrated improper business dealings. failed to setup an escrow account separate from

his own personal account and commingled funds within in his personal account. As set forth above, this behavior is in violation of the provisions of Sections 339.010 through 339.180, RSMo, and lawful rules adopted from said sections, and represents improper business dealings, thus, providing cause exists to discipline Edwards' license pursuant to 339.100.2(1), (15), and (19), RSMo, Supp. 2013

II. **Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2013.

11. **Edwards's license is on probation.** Edwards's license as a real estate broker is hereby placed on PROBATION for a period of 3 YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Edwards shall be entitled to practice as a real estate broker under Chapter 339, RSMo, as amended, provided Edwards adheres to all the terms of this agreement.

12. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Edwards shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Edwards shall notify the MREC in writing within ten (10) days of any change in this information.

B. Edwards shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current and active status. During the disciplinary period, Edwards shall not place his real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Edwards may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Edwards applies for a real estate license after surrender, Edwards shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Edwards shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will

be at the MREC's discretion and may occur periodically during the probation period.

D. Edwards shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Edwards shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Edwards shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Edwards's license as a real estate broker under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Edwards shall report to the MREC each occurrence of Edwards being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

H. Broker Acknowledgement. If at any time during the disciplinary period Edwards wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license.

Edwards must obtain the Broker Acknowledgement form from the MREC.

I. Edwards shall not conduct any property management for the duration of the disciplinary period.

13. Upon the expiration of the disciplinary period, the license of Edwards shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Edwards has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Edwards's license.

14. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

15. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Edwards of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

16. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

17. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Edwards agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

18. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

19. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be

changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

20. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

21. Edwards, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in


the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

22. Edwards understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Edwards's license. If Edwards desires the Administrative Hearing Commission to review this Settlement Agreement, Edwards may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

23. If Edwards requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Edwards's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Edwards as allowed by law. If Edwards does not request review by the Administrative Hearing Commission, then this Settlement Agreement goes


into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE




William M. Edwards Date

MISSOURI REAL ESTATE
COMMISSION



Joseph Denkler, Executive Director
Date: 11/13/15

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